No. 87-1011

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

PEOPLE OF THE STATE OF ILLINOIS, Petitioner, vs. WALTER WHITE, Respondent.	)	On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONSE PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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1. Certiorari should be denied because, contrary to the assertion of petitioner, the lower court quite clearly applied the correct rule of law in affirming the trial court's suppression of respondent's in-custody statements as the product of his illegal arrest. The petitioner's contention that respondent's statement "was in no sense the product of the allegedly illegal entry" and was "not the product of unlawful police conduct" (Petition for Certiorari, p.14) is directly contrary to this Court's decisions in Wong Sun v. United States, 371 U.S. 471 (1963) and Brown v. Illinois, 422 U.S. 590 (1975) The unlawful entry and illegal arrest of petitioner lead directly to his interrogation and statements. Although Petitioner contends that the confession was admissible under the "attenuation rule", petitioner cites no facts in support of its claim of attenuation, except to state repeatedly that the confession was made at "another time and place --" i.e., on the day following respondent's arrest and at the police station. To accept petitioner's claim would be to hold that the police can cause attenuation by holding petitioner illegally overnight and removing him to the police station. See Dunaway v. New York, 442 U.S. 200, 220 (1979) (concurring opinion of Mr. Justice Stevens)

2. Petitioner's reliance on the "inevitable discovery" rule and the "independent source" doctrine fares no better and is supported by nothing more than the bold assertion that it "is quite clear that respondent would have confessed had he been arrested on the street." (Petition for Certiorari, p.18) There are no facts cited in support of this claim and the record does not support it. Moreover, the "independent source doctrine", upon which respondent principally relies, has absolutely no application here. As this Court stated in Nix v. Williams, 467 U.S. 431 (1984), "The independent source doctrine allows admission of evidence that has been discovered by means "wholly independent of any constitutional violation." (467 U.S. at 443) (emphasis added) The statements of respondent cannot in any sense be said to have been obtained by a "means wholly independent" of the constitutional violation.

3. Petitioner's suggests that arrests which are illegal under Payton v. New York, 445 U.S. 573 (1980) be treated differently and that the suppression order be limited to evidence seized at the time of the illegal entry. There is no precedent for treating an illegal arrest under Payton differently than other illegal arrests, and it would not be wise to carve court exceptions to the rule of Wong Sun. The only reason offered in support of this contention is that the statements were "not the product" of the illegal entry. This rather simplistic approach not only begs the question but ignores the well-settled rules established by this Court in Wong Sun and Brown for determining whether the evidence sought to be suppressed was obtained by exploitation of the initial illegality and not by means sufficiently distinguishable to be purged of the primary taint. Wong Sun v. United States, 371 U.S. 471, 488 We commend to the Court the analysis of the Supreme Court of Illinois on this pont at pp.25-3256 of its opinion. (Petition for Certiorari, Appendix A, pp.25-32)

4. Finally, we point out that this Court has never held that the taking of a statement at a "different time and place" from that of the

arrest constitutes sufficient attenuation. As recently pointed out by Mr. Justice White in dissenting from a denial of certiorari in Phillip Lekas v. Illinois, (No. 87-5803, March 7, 1988), this Court has recognized that release from custody or presentation before a neutral magistrate may purge the taint of an illegal arrest, but has never held that confrontation of the accused with new evidence severs the link between the custodial confession and the illegal arrest. The facts of the respondent's case do not approach any of these circumstances and certainly provide an insufficient basis for consideration of the question which petitioner seeks to raise.

Respectfully submitted,

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